

two or more tenants in common or joint tenants before division.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 19524, May 7, 1992; 58 FR 26681, May 5, 1993; 58 FR 48287, Sept. 15, 1993; 58 FR 58648, Nov. 3, 1993; 61 FR 35925, July 9, 1996; 62 FR 9355, Mar. 3, 1997; 62 FR 28619, May 27, 1997; 68 FR 7698, Feb. 18, 2003; 68 FR 62224, Nov. 3, 2003; 69 FR 5263, Feb. 4, 2004]

#### § 1943.5 [Reserved]

#### § 1943.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit elsewhere is not available, with or without a guarantee or a subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA or its successor agency under Public Law 103-354 guarantee or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed FO loan request can be processed by the lender for consideration by FmHA or its successor agency under Public Law 103-354.

(c) Property and interests in property owned and income received by an individual applicant, or an entity applicant and all of its members as individuals, will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement farm ownership loans with credit from other credit sources to the extent economically fea-

sible and in accordance with sound financial management practices.

[53 FR 35692, Sept. 15, 1988, as amended at 68 FR 7698, Feb. 18, 2003]

#### § 1943.7 For the State of Hawaii—FO loans on leasehold interest on real property.

The term owner-operator as used in this subpart shall include in the State of Hawaii the lessee-operator of real property in any case in which the County Supervisor determines that such real property cannot be acquired in fee simple by the lessee-operator. The leasehold must provide adequate security for the loan. A leasehold is the right to use property for a specific period of time under conditions provided in a lease agreement. The determination of value will be made by an appraisal of the present market value of the leasehold by an FmHA or its successor agency under Public Law 103-354 employee designated to appraise farm real estate. The terms and conditions of the lease must be such as to allow the lessee-operator to have a reasonable probability of accomplishing the objectives and repayment of the loan. The FmHA or its successor agency under Public Law 103-354 Hawaii State Office will issue an amendment to its State supplement for this subpart providing the necessary requirements (including forms) for obtaining the required security. The amendment to the State supplement and forms, and any revisions to them, but have prior National Office approval before being issued.

#### §§ 1943.8–1943.9 [Reserved]

#### § 1943.10 Preference.

(a) In addition to the preference established in subpart A of part 1910 of this chapter, an application for a loan for land purchase from an applicant who (1) has a dependent family, or (2) is an owner of livestock and farm implements necessary to successfully carry on farming operations, or (3) is able to make down payments will be given preference over one from an applicant who does not meet any of these criteria.

(b) The portion of a State's farm ownership (FO) loan fund allocation

designated for applicants who are members of socially disadvantaged groups will be used exclusively to assist them in purchasing farmland. However, this requirement does not preclude the use of the State's regular allocation of FO funds for loans for other authorized FO loan purposes to applicants who are members of socially disadvantaged groups. (See exhibit B of this subpart, "Target Participation Rates for Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 Direct Farm Ownership (FO) Loans and Acquired Property Outreach Program for Members of Socially Disadvantaged Groups".)

[53 FR 35692, Sept. 15, 1988, as amended at 55 FR 21527, May 25, 1990]

**§ 1943.11 Receiving and processing applications.**

Applications for FO loans will be received and processed as provided in subpart A of part 1910 of this chapter, with consideration given to the requirements in exhibit M of subpart G of part 1940 of this chapter. Socially disadvantaged individuals will be provided the technical assistance necessary when applying for FO loans or other assistance to acquire inventory farmland. Such assistance shall include, but not be limited to, completion of application and farm and home planning.

[55 FR 21528, May 25, 1990]

**§ 1943.12 Farm ownership loan eligibility requirements.**

In accordance with the Food Security Act of 1985 (Pub. L. 99-198), after December 23, 1985, if an individual or any member of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR part 1308, which is exhibit C to subpart A of part 1941 of this chapter and is available in any FmHA or its successor agency under Public Law 103-354 office, for the definition of *controlled substance*) prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner or joint operator of the entity was con-

victed and the four succeeding crop years. Applicants will attest on Form FmHA or its successor agency under Public Law 103-354 410-1, "Applications for FmHA or its successor agency under Public Law 103-354 Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(a) *An individual must:*

(1) Be a citizen of the United States, a United States non-citizen national, or a qualified alien under applicable Federal immigration laws. United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have sufficient applicable educational and/or on the job training or farming experience in managing a farm or ranch which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rate and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(5) Be the owner-operator of not larger than a family farm after the loan is closed (in the case of a limited resource applicant see § 1943.4 of this subpart).

(6) Have participated in the business operations of a farm or ranch for at least 3 years out of the 10 years prior to the date the application is submitted and satisfy at least one of the following conditions:

(i) Meet the definition of a beginning farmer or rancher.

(ii) The applicant, or anyone who will execute the promissory note, has not had direct FO loans outstanding for more than a total of 10 years prior to the date that the new FO loan is closed.